

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
441 4<sup>th</sup> Street, NW, Suite 540-S  
Washington, DC 20001-2714

DISTRICT OF COLUMBIA  
DEPARTMENT OF PUBLIC WORKS  
Petitioner,

v.

SANTIAGO D. SEDACA  
Respondent

Case No.: PW-V-05-K106458

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**FINAL ORDER**

**I. Introduction**

On July 20, 2005, the Government served a Notice of Violation upon Respondent Santiago D. Sedaca, alleging a violation of 21 DCMR 702.3, which provides that construction or demolition waste shall not be collected by the District's trash collection services. The Notice of Violation alleged that the violation occurred on July 15, 2005 at 4420 Chesapeake Street, N.W., and sought a fine of \$75.

Respondent originally filed a timely answer with a plea of Admit with Explanation. In response to an order requiring clarification of that plea, Respondent entered a plea of Deny, alleging that the waste in question was not placed out for collection by the District, but was hauled away by a private contractor. A Case Management Order was issued on October 28, 2005, setting a hearing on December 7, 2005 at 10:30 AM. Michael Vanison, the inspector who issued the Notice of Infraction, appeared on behalf of the Government. There was no appearance for Respondent. Pursuant to D.C. Official Code § 8-805(f), I proceeded with the hearing in Respondent's absence.

Based upon the testimony of the Government's witness, my evaluation of his credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

## **II. Findings of Fact**

Respondent owns a single family home at 4420 Chesapeake Street, N.W. On July 15, 2005, Mr. Vanison observed a pile of debris in front of the garage at that property. The debris was adjacent to the trash cans at the property, which had been placed at the proper place for pickup by the Department of Public Works. The debris included broken pieces of wallboard, making it likely that it came from construction or demolition activities.

The Case Management Order setting the hearing date was mailed to Respondent at 4420 Chesapeake Street, N.W., the return address used in Respondent's communications with this administrative court. The Postal Service has not returned that mailing to the clerk's office.

## **III. Conclusions of Law**

Because the Case Management Order setting the hearing date was mailed to Respondent's last known address and was not returned by the Postal Service, Respondent received proper notice of the hearing date. *Dusenbery v. United States*, 534 U.S. 161, 167-71 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). Proceeding in his absence, therefore, was authorized by D.C. Official Code § 8-805(f).

The Government charges Respondent with violating 21 DCMR 702.3, which provides:

Construction and demolition wastes and material shall not be collected by District collection services.

While the evidence establishes that construction or demolition waste was left at the trash collection point for Respondent's property, the question raised is whether that evidence establishes a violation of § 702.3. Section 702.3 arguably is addressed only to "District collection services," not property owners. For the reasons stated below, however, I reject that interpretation as overly narrow. The fine schedule for Litter Control Administration Act violations that was enacted by the Council includes fines for residential violations of § 702.3, and it describes the nature of the offense as "Construction waste out for collection." 24 DCMR 1380.1. Read in conjunction with the fine schedule, § 702.3 must be interpreted to include a prohibition on *placing* of construction or demolition waste for collection by the District's trash collection service. Thus, the statement that such waste "shall not be collected" by the District is an instruction to property owners not to put such waste out for collection. Otherwise, the Council's authorization of a fine for waste "out for collection" makes no sense.

The remaining question is the weight that can be given to Respondent's written claim that the waste at issue was not placed in the driveway for pickup by the District's trash collectors, but by a private contractor in connection with renovation work being performed in Respondent's home. Placement of the waste at the collection point used by the District's trash collectors reasonably can be interpreted as placing it there for pickup by those collectors. Collectors who come upon such a scene would expect that the trash is left there for them, and an inspector can not be expected to know the undisclosed subjective intent of someone who places construction or demolition waste next to a trash can. To be sure, placing construction waste at the collection point may be the only available alternative in certain circumstances, and it may be unreasonable

to expect such waste to be hauled away instantly by a contractor. Absent evidence that this narrow set of circumstances existed, however, the objective evidence establishes that placement of the waste at the collection point violated § 702.3.<sup>1</sup> The Council has established a fine of \$75 for a first violation (within 60 days) of § 702.3 at a residential property.<sup>2</sup> I will impose a fine in that amount.

The Litter Control Administration Act, D.C. Official Code §§ 8-805(e) and 8-807(c)(2), provides that a person who answers a Notice of Violation but fails, without good cause, to appear for a scheduled hearing is liable for a statutory penalty equal to twice the scheduled fine. As there is no basis in the record for concluding that Mr. Sedaca had good cause for failing to appear for the hearing, I must impose the statutory penalty of \$150.

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<sup>1</sup> Respondent did not appear at the hearing to offer evidence in support of the claim that he did not intend the waste to be picked up by the District's collection service.

<sup>2</sup> A single-family home meets the definition of a residential building. 24 DCMR 1399.1 (dwellings with three units or less).

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2006:

**ORDERED**, that Respondent shall pay a total of **TWO HUNDRED TWENTY FIVE DOLLARS (\$225)** in accordance with the attached instructions within 35 days of the mailing date of this Order (30 days plus 5 days service time pursuant to 1 DCMR 2811.5; and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within 35 days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 35 days from the mailing date of this Order, pursuant to D.C. Official Code § 8-807(h)(1) and 24 DCMR 1312.7; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 8-807(d-1), and the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 8-807(f); and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

October 22, 2006

/s/  
John P. Dean  
Principal Administrative Law Judge